

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RAUL VARELA,

Petitioner,

vs.

CIV No. 00-1754 MV/RLP

ERASMO BRAVO, Warden, *et al.*,

Respondents.

ORDER

THIS MATTER comes before the Court on the proposed findings and recommended disposition of the Magistrate Judge, filed February 13, 2001 [**Doc. No. 10**], the Petitioner having filed objections thereto on February 22, 2001 [**Doc. No. 11**]. The Court, having conducted a *de novo* review of the record, finds that more information is necessary before the Court can make a determination as to whether the objections are well taken, or whether the Court should adopt the Magistrate Judge's proposed findings and recommended disposition.

Mr. Varela filed a petition for a writ of habeas corpus asking that his sentence be overturned. He claims that at the time of sentencing he was a first time offender; that the prosecutor agreed to recommend and did recommend probation; that he was sentenced by a pro tem judge, not the original judge assigned to his case, who had died; and that this pro tem judge disregarded the agreement entered into by the parties and sentenced him to nine years, the maximum allowable under the statute. Mr. Varela filed a motion to reconsider his sentence, which was denied. His state habeas petition was summarily denied.

The Court finds that Mr. Varela requires counsel to assist him in the proceedings pending before this Court. The legal issues in this case are complicated and require a trained legal

advocate to adequately present them to this Court. Moreover, the Court believes that additional evidence, such as affidavits from the attorneys and judge in the underlying case, may be available to assist petitioner in presenting his case, and that an attorney is necessary to assist Mr. Varela in presenting a proper record before this Court.

IT IS HEREBY ORDERED that the Federal Public Defender is appointed to represent petitioner in the proceedings before this Court.

IT IS FURTHER ORDERED that petitioner will have thirty (30) days from the date of this Order to file a supplemental brief, addressing the merits of petitioner's petition for a writ of habeas corpus, with this Court. Petitioner is also permitted to brief whether an evidentiary hearing is warranted. Respondent will have thirty days from the date of petitioner's brief to file a response; petitioner will have another thirty days from the date of respondent's response to file a reply.

IT IS FURTHER ORDERED that this Court's previous Order of Reference to the Magistrate Judge, filed April 4, 2001, [**Doc. No. 12**] is hereby withdrawn.

Dated this 21st day of August, 2001.



MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE